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STATE HOUSE ANNEX

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Lawrence J. Guay, Chairman  
N.H. State Board of Auctioneers  
Room 204, State House  
Concord, New Hampshire 03301

Dear Mr. Guay:

By letter, the Board has requested an opinion on two questions. First, whether the hearing procedures of RSA 541-A:16 et seq. take precedence over the hearing procedures outlined in the Board's statute, RSA 311-B:11-a. Second, whether the Board has authority to discipline an auctioneer whose conduct may be in violation of the Consumer Protection Act, RSA 358-A, the Hawkers and Peddlers Act, RSA 320 or the Itinerant Vendors Act, RSA 321. It is our opinion that RSA 541-A:16 et seq. and RSA 311-B:11-a are not in conflict and may reasonably be construed together. As to your second question, the Board should refer complaints alleging a violation of those statutes to the entity which enforces them. In addition to the action which may be taken against the auctioneer by that entity, the Board may undertake disciplinary action if the conduct rises to "unprofessional or dishonorable conduct unworthy of or affecting the practice of the profession."

In general, two statutes on the same subject matter should be construed together, if possible, and to the extent that a conflict exists, the latter more specific statute controls over the former more general one. Sutherland, Statutory Construction, Vo. 2A §51.02 (4th Ed. 1973). Where a reasonable construction of the two statutes taken together can be found, a court will not find that there has been an implied repeal of the earlier statute. Arnold v. City of Manchester, 119 N.H. 859 (1979). Applying these principles to your question, the



hearing procedure provisions of RSA 311-B:11-a and the later-enacted RSA 541-A:16 et seq. should be construed together, if possible.

The two statutes can be reasonably construed together. RSA 541-A:16 et seq. adds substantially more detail to the more general hearing procedures described in RSA 311-B:11-a. Thus, the more specific provisions of RSA 541-A:16 et seq. should be followed. RSA 311-B:11-a contains certain time requirements not contained in RSA 541-A: notice of a hearing must be given to the parties at least 14 days prior to the hearing, and a hearing on a complaint must be held within three months of the date the complained of auctioneer received notice of the complaint. RSA 541-A:16, III requires only "reasonable notice of a hearing." Therefore, the more specific 14-day notice period of RSA 311-B:11-a should be followed. RSA 541-A does not specify a time within which a hearing on a complaint must be held. Therefore, the three-month period of RSA 311-B:11-a should be followed.

It should also be noted that the Board's regulations regarding the complaint and hearing process were enacted prior to the 1983 amendments to RSA 541-A. The Board should review those regulations to insure that they comply with RSA 541-A. I will be happy to assist you in reviewing and revising the regulations, if necessary.

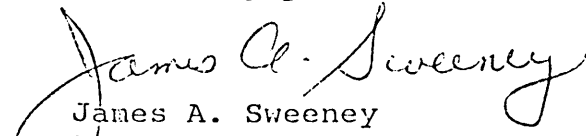
Turning to your second question, the Board's authority to take disciplinary action against licensed auctioneers is governed by RSA 311-B:11. The misconduct specified therein as sufficient to support disciplinary proceedings refers generally to actions involving the conduct of auctions. The Board does not have authority to determine whether there has been a violation of the Consumer Protection Act, RSA 358-A, the Hawkers and Peddlers Act, RSA 320 or the Itinerant Vendors Act, RSA 321, which do not refer to actions involving the conduct of auctions. Complaints which allege a violation of those statutes should be referred to the entity designated to enforce the statutes. See RSA 320:14, RSA 321:22 and RSA 358-A:4.

However, one of the types of misconduct sufficient to support disciplinary proceedings against an auctioneer is: "any unprofessional conduct, or dishonorable conduct unworthy of, and affecting the practice of the profession." RSA 311-B:11, II (c). Under this provision, the Board could take disciplinary action against a licensed auctioneer if it had been established that the auctioneer had violated another statute and his conduct is unworthy of and affects the practice of auctioneering. Since the authority to enforce those

statutes is placed in an entity other than the Board, the Board should not commence disciplinary proceedings under RSA 311-B:11, II (c) until the appropriate entity has determined whether there has been a violation of another statute in instances when the complained of conduct is unrelated to the conduct of an auction. In any case when the conduct alleged contravenes both RSA 311-B:11 and another substantive statute regardless of whether the other regulating authority proceeds, the Board may take disciplinary action under RSA 311-B:11.

I trust that this has been responsive to your questions. If you have any further questions regarding these matters, please feel free to contact me.

Very truly yours,

  
James A. Sweeney  
Attorney  
Division of Legal Counsel

JAS/cw

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